

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

EARLEAN R. CHATMAN, ET AL.

PLAINTIFFS

V.

NO. 4:98CV126-B-B

ALFONSO LAWSON, D/B/A LAWSON
CONSTRUCTION COMPANY

DEFENDANT

UNITED STATES OF AMERICA,
DEVELOPMENT,
UNITED STATES DEPARTMENT OF AGRICULTURE

GARNISHEE acting through RURAL

Memorandum Opinion

This cause comes before the court on the notice of removal and motion to dismiss filed by the United States on behalf of Rural Development, an agency of the United States Department of Agriculture [USDA]. The court *sua sponte* addresses the threshold issue of removal jurisdiction.

"[T]he federal courts have limited subject matter jurisdiction and cannot entertain cases unless authorized by the Constitution and legislation." Coury v. Prot, 85 F.3d 244, 248 (5th Cir. 1996) (citation omitted). Removal jurisdiction is governed by federal statutes. See e.g., 28 U.S.C. §§ 1441-1445, 1452. It is well-settled that removal statutes must be strictly construed, resolving all doubts regarding removability in favor of remand to state court. Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108, 85 L. Ed. 1214 (1941), cited in York v. Horizon Federal Sav. & Loan Ass'n, 712 F. Supp. 85, 87 (E.D. La. 1989); Powers v. South Central United Food & Commercial Workers Unions, 719 F.2d 760, 762 (5th Cir. 1983) ("In construing the removal statutes, the

Supreme Court has mandated a 'strict construction' approach, in recognition of the congressional intent to restrict the jurisdiction of federal courts on removal.") (citations omitted). "Accordingly, there is a presumption against subject matter jurisdiction that must be rebutted by the party bringing an action to federal court." Coury, 85 F.3d at 248 (citations omitted).

The notice of removal alleges that this action is removable under 28 U.S.C. § 1331, 1441(b) and 1442(a)(1). The United States has removed a garnishment proceeding arising out of a state court action in which a default judgment was entered against defendant Alfonso Lawson d/b/a Lawson Construction Company. Upon the plaintiffs' requests for writ of garnishment, writs of garnishment were issued to summon USDA/Bolivar County Rural Development and the City of Shaw, Mississippi as garnishees. The government's memorandum in support of the motion to dismiss implicitly states that the plaintiffs seek to garnish the salary due defendant Lawson in his employment with Rural Development.

Under 28 U.S.C. § 1441(a), "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed." The issue is whether the writ of garnishment raises an issue of federal law under the well-pleaded complaint doctrine. Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 63, 95 L. Ed. 2d 55, 63 (1987). The notice of removal asserts that "[a]n inescapable question in this case, controlled by Federal law, is whether the United States has consented to this garnishment action." Under the well-pleaded complaint rule, a federal question must appear on the face of the plaintiffs' properly pleaded complaint¹ in order to establish federal question jurisdiction. Caterpillar, Inc. v. Williams, 482 U.S. 386, 392, 96 L. Ed. 2d 318, 327 (1987). It is well settled that

¹In this cause, the plaintiffs' request for writ of garnishment governs.

a case may **not** be removed to federal court on the basis of a federal defense, including the defense of pre-emption, even if the defense is anticipated in the plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue.

Id. at 393, 96 L. Ed. 2d at 327. The Supreme Court has held that the well-pleaded complaint rule applies to the original jurisdiction and removal jurisdiction of the district courts. Franchise Tax Bd. of California v. Construction Laborers Vacation Trust, 463 U.S. 1, 10 n.9, 77 L. Ed. 2d 420, 431 n.9 (1983) cited in Chuska Energy Co. v Mobil Exploration & Producing North America, Inc., 854 F.2d 727, 730 (5th Cir. 1988).

The government asserts sovereign immunity in its motion to dismiss on the ground that it has not waived its immunity from the instant garnishment proceeding. Since sovereign immunity is a defense, it cannot invoke federal question jurisdiction. A state law cause of action does not arise under federal law "because prohibited thereby." Chuska Energy Co., 854 F.2d at 730 (quoting Franchise Tax Bd. of California v. Construction Laborers Vacation Trust, 463 U.S. at 12, 77 L. Ed. 2d at 432 and Gully v First Nat'l Bank, 299 U.S. 109, 116, 81 L. Ed. 70 (1936)). The court finds that the garnishment proceeding does not arise under federal law within the purview of 28 U.S.C. § 1331, and, therefore, is not removable under § 1441(a) or (b).²

28 U.S.C. § 1442(a)(1) provides:

A civil action or criminal prosecution commenced in a State court against any of the following may be removed by them to the

²The government erroneously asserts that the district court lacks subject matter jurisdiction since the state court had no subject matter jurisdiction. 28 U.S.C. §1441(e) abolished the doctrine of derivative jurisdiction as follows:

The court to which such civil action is removed is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.

district court of the United States for the district and division embracing the place wherein it is pending:

(1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, sued in an official or individual capacity **for any act under color of such office** or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

(Emphasis added.) Unlike § 1441, "§ 1442 itself grants independent jurisdictional grounds over cases involving federal officers where a district court otherwise would not have jurisdiction." IMFC Professional Services of Florida, Inc. v. Latin American Home Health, Inc., 676 F.2d 152, 156 & n.5 (5th Cir. 1982). The issue is whether the instant garnishment proceeding constitutes a civil action brought against a federal agency under § 1442(a)(1). The court finds that the ruling in Murray v. Murray, 621 F.2d 103 (5th Cir. 1980) governs this cause.

In Murray the court held that § 1442(a)(1) does not authorize the removal of a garnishment action brought by a divorced wife against the Veterans' Administration to garnish her former husband's disability benefits in satisfaction of unpaid alimony. 621 F.2d at 106-108. The purpose of § 1442(a)(1) "is to permit federal officers [or federal agencies]³ to remove state court actions that could interfere with the operation of the federal government, such as preventing federal officers from performing their official duties." Hexamer v. Foreness, 981 F.2d 821, 823 (5th Cir. 1993) (citing Murray).⁴ The court in Murray reasoned that the United States was only a stakeholder⁵ since the

³28 U.S.C. § 1442(a)(1) was amended on October 19, 1996 to authorize removal by federal agencies, as well as federal officers.

⁴See Murray, 621 F.2d at 107 (§ 1442(a)(1) also allows removal of actions that expose federal officers to civil liability or criminal penalty for acts performed under color of office).

⁵ In an action against the Postal Service, the United States Supreme Court stated in dicta: [I]t is far from clear that the Postal Service may remove a

summons in garnishment could not affect its fixed obligation to pay monthly disability benefits and, therefore, the garnishment action in state court could not "arrest, restrict, impair, or interfere with either the actions of a federal official or the operations of the federal government." 621 F.2d at 107.⁶ Cf. Loftin v. Rush, 767 F.2d 800, 804 (11th Cir. 1985)⁷ (default judgment against the United States for the full amount of a judgment entered against a United States Navy employee "had the effect of changing the United States from a stakeholder in a garnishment action to a debtor").⁸ The court finds that the government, on behalf of Rural Development, USDA, is only a stakeholder in this proceeding and is therefore not entitled to the right of removal under § 1442(a)(1).

garnishment action when it is merely a stakeholder and the real party in interest is the employee." Franchise Tax Bd. of California v. United States Postal Service, 467 U.S. 512, 524 n. 19, 81 L. Ed. 2d 446, 455 n. 19 (1984) quoted in Hexamer v. Foreness, 981 F.2d 821, 823 (5th Cir. 1993). In Hexamer the court held that 39 U.S.C. § 409 "does not confer subject matter jurisdiction on the federal courts in garnishment actions in which the Postal Service is only a stakeholder." 981 F.2d at 824. Section 409 provides that "the United States district courts shall have original but not exclusive jurisdiction **over all actions brought by or against the Postal Service**" (emphasis added). The court reasoned that § 409 "is designed to serve the same purpose as 28 U.S.C. § 1442(a)(1): to provide a federal forum for any litigation that might interfere with the performance of federal duties." Id. at 823-24.

⁶But see Nationwide Investors v. Miller, 793 F.2d 1044, 1046-1047 (9th Cir. 1986) (expressly disagreeing with the Fifth Circuit's rationale in Murray underlying its holding that a summons in garnishment is not a civil action within the purview of 28 U.S.C. § 1442(a)(1)). See Murray, 621 F.2d at 106-108.

⁷The court in Loftin v. Rush noted that Murray was one of the cases adopted as binding precedent by the Eleventh Circuit. 767 F.2d 800, 804 n. 7 (5th Cir. 1985).

⁸abrogated on other grounds, Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 135 L. Ed. 2d 1 (1996). See Ariail Drug Co. v. Recomm Int'l Display, Inc., 122 F.3d 930, 933 (11th Cir. 1997).

For the foregoing reasons, the court finds that this cause was improperly removed and should be remanded for lack of removal jurisdiction pursuant to 28 U.S.C. § 1447(c).⁹ An order will issue accordingly.

THIS, the _____ day of August, 1998.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE

⁹The court has no subject matter jurisdiction to rule on the government's motion to dismiss and therefore declines to do so.